

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS GESUALDI, ANTHONY D'AQUILA,
LOUIS BISIGNANO, MICHAEL O'TOOLE,
BENNY UMBRA, JOSEPH FERRARA,
FRANK FINKEL, MARC HERBST, DENISE
RICHARDSON, and THOMAS CORBETT,
as Trustees and fiduciaries of
the Local 282 Welfare, Pension,
Annuity, Job Training and Vacation
and Sick Leave Trust Funds,

Plaintiffs,

-against-

MEMORANDUM & ORDER
13-CV-5429 (JS) (AKT)

TRI-STATE SOIL SOLUTIONS, LLC,

Defendant.

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APPEARANCES

For Plaintiffs: James Robert Grisi, Esq.
Jael Dumornay, Esq.
Trivella & Forte LLP
1311 Mamaroneck Avenue, Suite 170
White Plains, NY 10605

For Defendant: No appearances.

SEYBERT, District Judge:

Pending before the Court is Magistrate Judge A. Kathleen Tomlinson's Report and Recommendation ("R&R"), recommending that this Court grant Plaintiffs' motion for a default judgment and award damages. (Docket Entry 35.) For the following reasons, the Court ADOPTS Judge Tomlinson's R&R in its entirety.

BACKGROUND

This action was commenced on October 1, 2013 by plaintiffs Thomas Gesualdi, Anthony D'Aquila, Louis Bisignano,

Michael O'Toole, Benny Umbra, Joseph Ferrara, Frank Finkel, Marc Herbst, Denise Richardson, and Thomas Corbett, as Trustees and fiduciaries of the Local 282 Welfare, Pension, Annuity, Job Training and Vacation and Sick Leave Trust Funds (collectively, "Plaintiffs") against defendant Tri-State Soil Solutions, LLC ("Defendant"). Plaintiffs brought this action pursuant to Sections 502(a)(3) and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1132(a) and 1145 and Section 301 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 185. Plaintiffs seek to recover unpaid contributions, interest, liquidated damages, as well as attorneys' fees and costs from Defendant-employer Tri-State Soil Solutions.

On September 19, 2014, Plaintiffs moved for a default judgment. (Docket Entry 20.) On September 22, 2014, the undersigned referred Plaintiffs' motion to Magistrate Judge Tomlinson for a R&R on whether the motion should be granted. (Docket Entry 29.)

On August 3, 215 Judge Tomlinson issued her R&R. (Docket Entry 35.) The R&R recommends that the Court (1) grant Plaintiffs' motion for a default judgment against Tri-State and (2) award Plaintiffs unpaid pension contributions with corresponding interest, liquidated damages, attorneys' fees, costs and expenses. (R&R at 2.)

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b) (1) (C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Tomlinson's R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

Judge Tomlinson's R&R (Docket Entry 35) is ADOPTED in its entirety. The Court is directed to enter judgment in favor of Plaintiffs and against Defendant, and to award the following damages:

- \$123,533.13 in unpaid contributions;
- \$83,650.13 in interest on the unpaid contributions and interest accruing at \$60.911 per diem from September 20, 2014 through the date of judgment;

- \$68,203.26 in liquidated damages and additional liquidated damages at \$60.911 per diem from September 20, 2014 through the date of judgment;
- \$33,731.75 in attorneys' fees; and
- \$27,195.18 in costs and expenses.

The Clerk of the Court is further directed to mark this matter CLOSED. Plaintiffs' counsel is directed to serve a copy of this Memorandum & Order on Defendant.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: September 23, 2015
Central Islip, New York